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Attorney Docket No. PC10946A

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By

(Signature of person mailing)

A. David Joran (Reg. No. 37,858)

(Typed or printed name of person)

#7
3/19/03
Lisa**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: Ronald J. Ogilvie :

APPLICATION NO.: 10/054,727 : Examiner: Small, A.D.S.

FILING DATE: November 13, 2001 : Group Art Unit: 1626

TITLE: NEW PROCESS :

Commissioner for Patents
Washington, D.C. 20231

Sir:

COMMUNICATION IN RESPONSE TO FEBRUARY 3, 2003 OFFICE ACTION

This Communication is submitted in response to the Office Action issued on February 3, 2003 in connection with the above-identified application. A response is due March 3, 2003. Accordingly, this Communication is being timely filed.

RESTRICTION REQUIREMENT

In the Office Action, the Examiner re-restricted the claims under 35 U.S.C. §121 to five inventive Groups, as follows:

Group I Claims 1-3, drawn to preparing compound of formula I;

Group II Claims 4-12 and 18, drawn to compound of formula II and process of preparing the same;

Group III Claims 13-14, drawn to preparing compound of formula III;

Group IV Claims 15-17, drawn to process of preparing a pharmaceutically acceptable salt of compound; and

Group V Claims 19-23, drawn to compound eletriptan substantially free of another compound.

According to the Examiner, the inventions are distinct, each from the other because the Groups represent separate and distinct inventions.

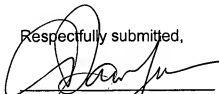
In response to the restriction election requirement, applicants hereby elect Group V, claims 19-23, with traverse. However, applicants respectfully disagree with the restriction requirement on the ground that it is improper since prosecution of the restricted subject matter in a single application would not place a serious burden on the Examiner. MPEP §803. According to MPEP §803, the Examiner may impose a group restriction when (1) the inventions are independent or distinct as claimed and (2) where there is a serious burden on the Examiner if restriction is not required. Since the core subject matter recited in non-elected Groups I-IV is necessarily related to, or otherwise functionally connected with, that of elected Group V, relevant prior art for all Groups would likely be found in the same place, and therefore, no added burden is imposed on the Examiner to search the non-elected Groups I-IV.

Accordingly, applicants respectfully request reconsideration and withdrawal of the restriction requirement, and rejoinder of non-elected Groups I-IV with elected Group V.

Applicants respectfully submit that the pending claims are allowable, and solicit the issuance of a notice to such effect. If a telephone interview is deemed to be helpful to expedite the prosecution of the subject application, the Examiner is invited to contact applicants' undersigned attorney at the telephone number provided.

No fee is believed to be necessary in connection with this Amendment. Authorization, however, is hereby provided to charge any fee deemed required, or to credit any overpayment, to Deposit Account No. 16-1445.

Respectfully submitted,



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Date: February 12, 2003

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